

No. 11180

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

HARRY LUTZ and HARRY LUTZ and ROSE LUTZ,
executor and executrix of the last will and testa-
ment of Abe Lutz, Deceased,

Appellants,

vs.

THE ENGLAND MUTUAL LIFE INSURANCE
COMPANY OF BOSTON, a corporation,

Appellee.

TRANSCRIPT OF RECORD

(In Two Volumes)

VOLUME II

BOOK OF EXHIBITS

(Pages 383 to 434, Inclusive)

Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

JAN 30 1935

PAUL P. O'BRIEN

No. 11180

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United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

HARRY LUTZ and HARRY LUTZ and ROSE LUTZ,
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ment of Abe Lutz, Deceased,

Appellants,

vs.

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Upon Appeal from the District Court of the United States
for the Southern District of California,
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INDEX TO EXHIBITS.

Plaintiff's Exhibits:

No.	Page
1. Statement re pre-trial conference (In Evidence) 79 (In Book of Exhibits).....	383
2. Original application for policy in suit (In Evidence)	80
(In Book of Exhibits).....	391
3. Original policy bearing No. 1172844 (In Evidence)	80
4. Notice of claim and proof of death on the form of New England Mutual Life Insurance Com- pany of Boston, Massachusetts (In Evidence)..	80
(In Book of Exhibits).....	395
5. Prescription of Stephen G. Seech, M.D., dated January 15, 1943 (In Evidence).....	83
(In Book of Exhibits).....	399
6. Prescription of Stephen G. Seech, M.D., dated October 11, 1937 (For Identification).....	83
(In Book of Exhibits).....	400
7. Prescription of Henry H. Lissner, M.D., and Maurice H. Rosenfeld, M.D., dated June 1, 1942 (For Identification).....	83
(In Book of Exhibits).....	401
10. Records of Cedars of Lebanon Hospital (In Book of Exhibits).....	402
11. Records of Cedars of Lebanon Hospital (In Book of Exhibits).....	403
12. Electrocardiograms taken by Dr. Rosenfeld January 16, 1937 (For Identification).....	102
(In Evidence)	113

ii.

Plaintiff's Exhibits:

No.	Page
13. Electrocardiograms taken by Dr. Rosenfeld June 1, 1942 (In Evidence).....	113
14. Electrocardiograms taken by Dr. Rosenfeld June 3, 1942 (In Evidence).....	113
15. Electrocardiograms taken by Dr. Rosenfeld June 5, 1942 (In Evidence).....	113
16. Electrocardiograms taken by Dr. Rosenfeld July 6, 1942 (For Identification).....	114
(In Evidence)	129
17. Electrocardiograms taken by Dr. Rosenfeld June 12, 1942 (For Identification).....	115
(In Evidence)	129
18. Electrocardiograms taken by Dr. Rosenfeld August 10, 1942 (In Evidence).....	129
19. Letter, dated March 9, 1943, from Northwest- ern National Life Insurance Company to Dr. Rosenfeld (In Evidence).....	130
20. Document, dated June, 1944, containing signa- ture of Harry Lutz (For Identification).....	239
(In Evidence)	239
(In Book of Exhibits).....	404
27. Deposition of Harold M. Frost:	
Plaintiff's Exhibits:	
No.	
1. Application of Abe Lutz (For Identifica- tion)	255
(In Book of Exhibits).....	405
1A. Work sheet (For Identification).....	256
(In Book of Exhibits).....	407

Plaintiff's Exhibits:

No.	Page
-----	------

7. Deposition of Harold M. Frost:

Plaintiff's Exhibits:

No.	
2.	Report of Medical Examiner, November 16, 1942 (For Identification).....257 (In Book of Exhibits).....408A
3.	Report of Urinary Analysis (For Identification)257 (In Book of Exhibits).....409
4.	Letter, November 25, 1942, signed Robert M. Daley, M.D. (For Identification)..... 258 (In Book of Exhibits).....410
5.	Letter, December 8, 1942, Harold P. Morgan to Doane Arnold (For Identification)..275
6.	Letter, December 24, 1942, Harold P. Morgan to Doane Arnold (For Identification) 276
7.	Letter, April 5, 1943, Harold P. Morgan to Dr. Frederick R. Brown (For Identification)297

Defendants' Exhibits:

No.	
1.	Letter, November 16, 1942, Harold P. Morgan to Doane Arnold (For Identification)277
2.	Attending physicians statement (For Identification)278
3.	Telegram, November 19, 1942, New England Mutual to Equitable Life Assurance Society (For Identification).....279

Plaintiff's Exhibits:

No.

Page

27. Deposition of Harold M. Frost:

Defendants' Exhibits:

No.

4. Letters, November 16 and 17, 1942, Harold P. Morgan to Doane Arnold (For Identification)	280
5. Telegram, December 1, 1942, Underwriting Department to New England Mutual at Los Angeles; letter, December 1, 1942. Doane Arnold to Hays & Bradstreet; telegram, April 8, 1943, New England Mutual to New England Mutual of Los Angeles (For Identification)	282
8. Attending physician's statement (For Identification)	289
11. Letter, December 14, 1942, H. M. Frost to Hays & Bradstreet (For Identification)	282
12. Letter, January 14, 1943, F. R. Brown to Hays & Bradstreet (For Identification).....	282
13. Telegram, December 29, Home Office to New England Mutual at Los Angeles (For Identification)	283
28. Chart of Jaeger's Test (In Evidence).....	228
29. Agency contract, June 28, 1938, between plaintiff insurance company and Hays & Bradstreet; and supplementary agreement, dated June 28, 1938, between same parties (In Evidence).....	243
(In Book of Exhibits).....	413

Defendants' Exhibits:	Page
A. Four sheets of memoranda of Dr. Rosenfeld (For Identification)	133
B. Copy of document from deposition of Dr. Rosenfeld (For Identification).....	149
(In Evidence)	328
C. Certified copy of local death record of Mr. Lutz (For Identification)	150
(In Evidence)	152
(In Book of Exhibits).....	419
D. [See Plaintiff's Exhibit 27] (In Book of Ex- hibits)	421
E. Letter, dated December 31, 1942, addressed to Mr. Stanley Leeds and signed Harold P. Mor- gan (For Identification).....	307
H. Telegram to New England Mutual Life Insur- ance Company, 609 South Grand, Los Angeles, from the Underwriting Department (For Identi- fication)	320
I. Letter from New England Mutual Life Insur- ance Company, dated December 1, 1942, from the manager of the Underwriting Department (For Identification)	322
J. Letter, dated December 8, 1942, from Harold P. Morgan to Mr. Doane Arnold (For Identifica- tion)	325
K. Plaintiff's letter, dated December 14, 1942, to Hays & Bradstreet, signed H. M. Frost, Medical Director (In Evidence).....	328

Defendants' Exhibits:

Page

L. Letter, dated December 24, 1942, from Harold P. Morgan to Dr. Harold M. Frost (In Evidence)	332
M. Telegram to New England Mutual Life, 609 South Grand, Los Angeles, from New England Mutual Life Insurance Company (For Identification)	335
N. Letter, dated January 14, 1943, from New England Mutual Life Insurance Company from F. R. Brown, Associate Medical Director (For Identification)	336
O. Blank copy of attending physician's statement of the New England Mutual Life Insurance Company (For Identification).....	350
P. Deposition of Harold Morgan (In Evidence)....	242

[PLAINTIFF'S EXHIBIT NO. 1]

In the District Court of the United States
Southern District of California
Central Division

Civil No. 3930 R. J.

New England Mutual Life Insurance Company
of Boston, a corporation,

Plaintiff,

vs.

Harry Lutz, et al.,

Defendants.

STATEMENT RE PRE-TRIAL CONFERENCE

On March 10, 1945, counsel for the parties to the above entitled action conferred, and the following is a statement of the results of said conference:

(a) For the purposes of the trial of the above entitled action, the following facts are hereby stipulated to be true:

(1) That on November 14, 1942, at Los Angeles, California, Abe Lutz, as "proposed insured", and defendant Harry Lutz, as "applicant for insurance", signed and delivered to Stanley S. Leeds, for delivery to plaintiff, Part I of the application for the issuance of a policy of life insurance upon the life of said Abe Lutz in the face amount of \$13,000.00.

(2) That on November 16, 1942, said Abe Lutz submitted himself to a medical examination in connection with said application; that said medical examination was made by John M. Waste, M. D., at the office of said John M. Waste, Los Angeles, Cali-

(Plaintiff's Exhibit No. 1)

fornia; that at said time and place, said Abe Lutz signed Part II of said application for said policy of life insurance.

(3) That on December 1, 1942, plaintiff issued it policy of life insurance numbered 1 172 844 in the face amount of \$13,000.00 upon the life of said Abe Lutz, as insured.

(4) That said policy number 1 172 844 was delivered and the first premium upon said policy was paid on or about December 7-9, 1942, at Los Angeles, California.

(5) That a photostatic copy of Parts I and II of said application was attached to said policy at the time the same was issued and delivered as aforesaid.

(6) That attached hereto are photostatic copies of Parts I and II of said application for said policy of life insurance.

(7) That all premiums required to be paid by the insured pursuant to the provisions of said policy were paid within the time therein provided.

(8) That Abe Lutz, said insured, died on May 28, 1944.

(9) That on June 1, 1944, defendant and counterclaimant Harry Lutz filed with plaintiff a notice of the death of said Abe Lutz, insured; that on or about September 28, 1944, said Harry Lutz filed with plaintiff a notice of claim and due proof of the death of said Abe Lutz, insured.

(10) That on October 11, 1944, defendant and counterclaimant Harry Lutz received those certain

Plaintiff's Exhibit No. 1)

letters, copies of which are marked "Exhibit A" and attached to plaintiff's amended complaint on file herein, together with the check therein particularly described; that thereafter, by letter dated October 16, 1944, and signed by said Harry Lutz, said tender was rejected and said check was returned to plaintiff.

(b) Without intending hereby to limit or foreclose other possible issues, counsel have agreed that the principal issues to be determined upon the trial of this cause, stated in general terms, are as follows:

(1) Whether any matters of fact material to the risk insured against by the terms of said policy were concealed or misrepresented in the application for said policy;

(2) Whether plaintiff is estopped to rescind said policy;

(3) Whether plaintiff has waived any right which it might otherwise have had to rescind said policy;

(4) The validity of plaintiff's contention that said policy never became effective in that the insured was not in good health at the time the application for said policy was approved at plaintiff's home office and at the time the first premium was paid within the meaning of the provision of said policy "that the insurance applied for shall not take effect unless and until this application is approved by the company at

(Plaintiff's Exhibit No. 1)

its home office and the first premium is paid while the proposed insured is in good health; * * *."

(5) Whether any grounds of rescission or contest asserted by plaintiff herein are barred by the incontestable clause of said policy;

(c) That plaintiff expects to offer in evidence the following documents:

(1) This statement re pre-trial conference;

(2) The application for said policy of insurance;

(3) The policy;

(4) Report of medical examiner and agent's certificate submitted to plaintiff with said application;

(5) Records of Sansum Clinic, Santa Barbara, including medical history given by insured upon admission to said clinic on or about June 23, 1943;

(6) Hospital records of Cedars of Lebanon Hospital, including medical history given by insured after admission to said hospital on or about May 14, 1944;

(7) Death certificate of insured.

(d) That defendants and counterclaimant expect to offer in evidence the following documents:

(1) The policy;

(2) Report of Dr. John M. Waste, Medical Examiner for insurance company;

Plaintiff's Exhibit No. 1)

(3) Letter dated November 16, 1942, from Harold P. Morgan, who signs as Assistant General Agent of the insurance company to Mr. Doane Arnold, Manager Underwriting Department of plaintiff insurance company, at Boston, Massachusetts;

(4) Letter dated November 17, 1942, from Harold P. Morgan, who signs as Assistant General Agent of the insurance company to Mr. Doane Arnold, Manager Underwriting Department of plaintiff insurance company, at Boston, Massachusetts;

(5) Telegram dated December 1, 1942, from Underwriting Department of plaintiff New England Mutual Life Insurance Company to New England Mutual Life Insurance Company at 609 South Grand Avenue, Los Angeles, California;

(6) Letter dated December 1, 1942, from Doane Arnold, Manager Underwriting Department to Messrs. Hays & Bradstreet, Los Angeles, California;

(7) Letter dated December 8, 1942, from Hays & Bradstreet by Harold P. Morgan to Mr. Doane Arnold, Manager Underwriting Department, Boston, Massachusetts;

(8) Letter dated December 14, 1942 from plaintiff insurance company (H. M. Frost, Medical Director) to Hays & Bradstreet re subject "Abe Lutz—1,174,369 for additional.";

(9) Letter dated December 24, 1942, from Harold P. Morgan to Dr. Harold M. Frost, Chief Medical

(Plaintiff's Exhibit No. 1)

Director of plaintiff insurance company, Boston, Massachusetts;

(10) Telegram dated December 29, 1942, from the plaintiff insurance company to "New England Mutual Life Insurance Company, 609 South Grand Avenue, Los Angeles, California";

(11) Letter dated January 14, 1943, from plaintiff insurance company (F. R. Brown, Associate Medical Director), to Hays & Bradstreet, Los Angeles, California, re "Abe Lutz—1,174,369";

(12) "Attending Physician's Statement"—questionnaire—the form used by plaintiff insurance company;

(13) Questionnaire—form used by Equitable Life Assurance Company—referred to as an enclosure in the letter of December 8, 1942, from Harold P. Morgan to Mr. Doane Arnold, Manager Underwriting Department of plaintiff insurance company at Boston, Massachusetts;

(14) Medical office records of Dr. John M. Waste, relating to physical examinations of insured, Abe Lutz;

(15) Premium receipts showing payment of annual premiums to Hays & Bradstreet.

Counsel for the respective parties have furnished the court with the description of documentary proof upon

Plaintiff's Exhibit No. 1)

which they will rely at the time of trial. It may be that other and additional documents, competent and material to the issues raised will be disclosed at the time of trial and the foregoing description of documents is not intended to limit or prevent either party relying on additional documents.

Dated: March 10, 1945.

MESERVE, MUMPER & HUGHES

By Roy L. Herndon

Roy L. Herndon

615 Richfield Building

Los Angeles, California

Attorneys for Plaintiff

McLAUGHLIN & MCGINLEY

By John P. McGinley

John P. McGinley

1224 Bank of America Building

Los Angeles, California

Attorneys for Defendants and Counter-Claimant

[Endorsed]: Filed Mar. 12, 1945. Edmund L. Smith, Clerk; by E. M. Enstrom, Jr., Deputy Clerk.

[Endorsed]: Case No. 3930. New England vs. Lutz. Plaintiff's Exhibit No. 1. Date 3/23/45. No. 1 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

1841
The first of the year was a very cold one
and the weather was very disagreeable
The wind was very strong and the rain
was very much increased
The snow was very much increased
The ice was very much increased
The frost was very much increased
The snow was very much increased
The ice was very much increased
The frost was very much increased
The snow was very much increased
The ice was very much increased
The frost was very much increased

1842
The first of the year was a very cold one
and the weather was very disagreeable
The wind was very strong and the rain
was very much increased
The snow was very much increased
The ice was very much increased
The frost was very much increased
The snow was very much increased
The ice was very much increased
The frost was very much increased
The snow was very much increased
The ice was very much increased
The frost was very much increased
The snow was very much increased
The ice was very much increased
The frost was very much increased

1843
The first of the year was a very cold one
and the weather was very disagreeable
The wind was very strong and the rain
was very much increased
The snow was very much increased
The ice was very much increased
The frost was very much increased
The snow was very much increased
The ice was very much increased
The frost was very much increased
The snow was very much increased
The ice was very much increased
The frost was very much increased
The snow was very much increased
The ice was very much increased
The frost was very much increased

[PLAINTIFF'S EXHIBIT NO. 2]

Agent's Certificate

To be filled out and signed by the Agent or Broker

1. How long have you known the Proposed Insured? About 8 months
2. Are you satisfied that the individual is of temperate habits and in good health? Yes
3. If Proposed Insured resides in the country: _____ miles in a _____ direction from _____ on _____ Road or Route.
4. If applicant is a Minor, give name and address of father, or of person with whom he resides. If applicant is a married woman, give full name of husband.
5. If Proposed Insured changed his residence or business address within a year, give the last previous address and employer.
6. Is an Aviation Questionnaire required by instructions above Part I? No If so, are you sending one? _____
7. Are premiums to be paid by a corporation, or from trust, guardianship or estate funds? No If so, are you submitting the required evidence of authority? _____
8. Occupation. Give comprehensive description. (Use Occupation Blank freely as circumstances make advisable.)
Completely executive - Owner of Western Iron & Metal Co.
9. If Beneficiary is not a relative, nor a business partner or associate, explain fully the insurable interest.
Son as Owner -
10. What other negotiations for Life Insurance are pending or contemplated? (State fully) Equitable just issued 1000. Standard Insurance
11. Has insurance applied for on life of Proposed Insured ever been declined, postponed or modified as to kind, amount or rate? (State fully) No
12. What is your estimate of Proposed Insured's financial worth? \$ 500,000 earned income? \$ 75,000 total income? \$ 100,000
13. Is the proposed insurance intended to replace any now carried in this or any other Company? (If so, state reasons and indicate Companies and form of insurance; if this Company, give policy numbers.)
No
14. Do you unqualifiedly recommend approval of the Application? Yes
- The attached slip indicating source of business must be completed.
- Los Angeles Nov. 14 1942 Stanley S. Lead Agent Broker

General Agent's Certificate

1. What is this Agent's status? Full-time _____ Part-time _____ Agent of another Company. _____ Broker _____
2. Is the Agent licensed where this Application is written: for this Company? _____ for another Company? _____ as Broker? _____
3. Are you sending the Home Office such material facts and special information as will assist in the final consideration of this Application? Yes Additional information regarding finances, purpose of insurance, dates of issue and plans of other insurance, and other special items, are desirable and will help to avoid delay when a large amount of insurance is applied for or carried.

Nov. 17 1942Harry & Braintree General Agent

Instructions

1. Check over every part of this Application before you send it to the Company. See that the Application and the Medical Report are clear, correct and complete.
2. Be sure that all information needed for inspection purposes is given as fully and clearly as you would wish were you responsible for inspecting.
3. Unless otherwise authorized, credit for this business will be given to the person named above Part I. See that the correct name appears. If a firm, give also name of individual solicitor. The name credited in your monthly analysis of new business must coincide.

(Plaintiff's Exhibit No. 2)

Unless right to change Beneficiary is reserved, a release of the interest of any Minor Beneficiary, under an order of court by a legally appointed Guardian, may be required before any change, surrender, or loan can be effected.

If the premium is paid on date Application is signed, the Policy will usually bear that date. If a different date is desired, indicate it clearly in the Application.

If the Automatic Premium Loan Provision is selected, a Request, which includes assignment, must be filed in duplicate with the Company before a Policy can be issued. This Application is the property of the Company, to whom it must be returned after the Medical Examination is made and the Application completed. It must not be withdrawn or destroyed.

A Questionnaire on Aviation must be sent to the Home Office if the Proposed Insured intends to fly as a passenger more than five hours during the next twelve months, or if he has made more than six flights in any year with a maximum of twelve hours' duration, or if he has ever made more than twenty flights with a maximum of forty hours' duration; or if he has ever piloted a plane or seriously considered learning to do so; or if he is associated with a company manufacturing or operating aircraft; or if he is an officer of the Army, Navy, or the Marine Corps. A flight is one take-off and landing.

USE BLACK INK
WRITE LEGIBLY

DO NOT WRITE ABOVE THIS BORDER EXCEPT AS INDICATED

The First Mutual Life Insurance Company Chartered in America

Part I—Application to the New England Mutual Life Insurance Company
For Insurance on the Life of **Abe Lutz**

1172844

Print name clearly as it should appear on the Policy

1 Residence Address No. 220 Street S. N. Andrews City Los Angeles State Cal.	14 Form of Insurance Ordinary Life with <i>Ordinary Life with</i>	15 Amount \$13,000	16 In whom payable Harry Lutz
2 Business Address No. 2500 Santa Fe City Los Angeles State Cal.	17 To whom payable Harry Lutz	18 Relationship Son	19 Is the right to change the Beneficiary reserved to the Proposed Insured? No
3 To be born and where are premium notices to be sent? Name Harry Lutz Address 2500 Santa Fe City Los Angeles State Cal.	20 Insurance in force on life of Proposed Insured N.Y. Life	21 Apply Dividends under Option C First Premium \$4,000 Subsequent Premiums \$113,000	22 Nonforfeiture Provision to be applied upon failure to pay premiums Extended Term
4 Date of Birth Month 15 Day 1878 Year 64	5 Citizenship U.S.A.	6 Sex Male	7 Age nearest birthday 64
8 Single, married, widowed or divorced Married	9 Any change contemplated No	10 Nature of Occupation Sales & Construction	11 Nature of Business Self employed
12 Employer Union of Western Iron & Metal	13 Nature of Business Self employed	14 Nature of Business Self employed	15 Nature of Business Self employed

Reserve for HOME OFFICE USE, for ADDITIONS and AMENDMENTS

It is Hereby Agreed that this Application, including Part II, a copy of which shall be attached to the Policy when issued, shall become a part of every Policy issued hereon; that acceptance of a Policy shall constitute ratification of any and all changes noted by the Company under "Additions and Amendments", and that the insurance applied for shall not take effect unless and until this Application is approved by the Company at its Home Office and the first premium is paid while the Proposed Insured is in good health; provided that subsequent premiums shall be due and subsequent policy years begin as shown on the first page of the Policy. If, however, the first premium is paid with this Application, and it is so stated in answer to Question 24, the insurance shall take effect as stipulated in the Conditional Receipt.

Signed in my presence this 14 day of Nov. 1942
Stanley B. Seeds
Agent Broker
Proposed Insured.
Applicant for Insurance.

References

Name Address

DO NOT WRITE BELOW THIS LINE EXCEPT AS INDICATED

When completed, give to the Agent or transmit Promptly to the General Agent.
If space insufficient, enter additional details under Question 71 or forward by letter and so state under Question 71.

45 General appearance (Healthy or otherwise)		48 Race <i>Caucasian</i>		49 Sex <i>Female</i>	
46 Completion <i>Muddy</i>		48 Color of eyes <i>Blue</i>		50 Color of skin <i>Fair</i>	
47 Birth of a respiration chest <i>Normal</i>		B Expiration <i>Normal</i>		51 Birth of abdomen <i>Normal</i>	
52 Did you examine chest with skin bare? <i>No</i>		53 Is temperature normal? <i>Yes</i>		54 Height 5' 11" <i>in.</i>	
54 Weight 182 <i>lb.</i>		55 Did you personally measure? <i>Yes</i>		56 Pulse: 84 <i>per min.</i>	
56 Pulse: 84 <i>per min.</i>		B Regular <i>Yes</i>		C Quality <i>Good</i>	
58 Reflexes: A Pupil <i>Normal</i>		B Knee <i>Normal</i>		C Romberg <i>Positive</i>	
60 Blood pressure: A Syst. <i>134</i>		B Dia. <i>84</i>		C Phase: <i>Normal</i>	
61 Urinalysis: (See Note)		A Are you satisfied that the specimen is authentic? <i>Yes</i>		C Albumin <i>None</i>	
B Specific Gravity <i>1.018</i>		C Albumin <i>None</i>		D Sugar <i>None</i>	
(If sugar is present, submit a portion of this specimen to our Chemist for quantitative analysis.) <i>Not done.</i>					
62 The following questions to be answered If Proposed insured is a woman:					
A Number of children		B Age of those living			
C Is she now pregnant?		D Have pregnancies and labors been normal?			
E Has she passed the climacteric?		F Has she had any miscarriages or any disease of the breasts or generative organs?			
63 Is there any evidence of past or present disease of:					
A Brain or Nervous System? <i>No</i>		B Heart or Blood Vessels? <i>No</i>		C Stomach or any Abdominal Organ? <i>No</i>	
D Lungs or Respiratory Tract? <i>No</i>		E Kidneys or Genitourinary Organs? <i>No</i>		F Eyes or Middle Ear? <i>No</i>	
G Skin or any other part of the body? <i>No</i>		H Deafness or Cough? <i>No</i>		I If so, is a suitable trace worn? <i>No</i>	
64 Is there a hernia (if so, describe fully)? <i>No</i>					
65 Is there any deformity, loss of member, impaired sight or hearing? <i>No</i>					
66 Describe any scars or other important identifications. <i>General experience - no scars or other identifications.</i>					
67 A Was the examination made in your office? <i>Yes</i>					
B If not, where? <i>At home</i>					
68 Were you and the Proposed Insured alone? <i>Yes</i>					
69 Has the examination been made under satisfactory conditions? <i>Yes</i>					
70 Have you any other information which might affect the Company's decision? Give details under 71 or in letter to Home Office. <i>No.</i>					

AL INFORMATION:
 applicant has not been under medical supervision for 4 months & 1/2. He is well.
 Change in wt. gradual - last summer realized he was getting too fat - so began cutting down diet. He is doing a little more active work. No change in 3 months. He looks well.

*NOTE: MICROSCOPIC ANALYSIS BY OUR CHEMIST is required when the insurance applied for, or together with that in force in this Company, exceeds \$30,000; when the Proposed Insured has passed his sixtieth birthday or is twenty-five per cent or more over normal weight. The specific gravity of the specimen must be 1.015 or higher.

Chemist _____ because of _____ Reason for microscopic analysis _____
Name of Chemist _____ General Agent _____

19

[Endorsed]: Case No. 3930. New England vs. Lutz.
Plf's Exhibit No. 2. Date 3/23/45. No. 2 in Evidence.
Clerk, U. S. District Court, Sou. Dist of Calif. P. D.
Rooser, Deputy Clerk.

[PLAINTIFF'S EXHIBIT NO. 4]

the furnishing of this blank for proof of death shall not be deemed a waiver of any defense under the policy or constitute an acknowledgment of any liability of the Company on the policy.

NEW ENGLAND MUTUAL LIFE INSURANCE
COMPANY
OF BOSTON, MASSACHUSETTS

NOTICE OF CLAIM and PROOF OF DEATH

Notice is hereby given to the New England Mutual Life Insurance Company, of Boston, That Abe Lutz of 012 So. Highland Avenue County of Los Angeles State (Legal Residence) of California, deceased, the person insured by said Company in the sum of \$13,000. dollars, by its Policy of Insurance No. 1,172,844, died at Los Angeles on the 28th day of May 1944, and was buried in Cemetery, at, and, in accordance with the terms thereof, the Statement of the Attending Physician is herewith appended.

(Signature of Claimant) Harry Lutz

NOTICE

- . The claimant's statement must be signed by the beneficiary named in the policy or the recorded assignee, if any.
- . When the beneficiary is a minor, the statement must be signed by the duly appointed Guardian, a certificate of whose appointment is required.
- . When, by the death of a named beneficiary, the policy becomes otherwise payable, an official certificate of the death of such beneficiary must be furnished, unless it has previously been filed with the Company.

(Plaintiff's Exhibit No. 4)

4. When the proceeds of a policy are payable to an executor or administrator, a certificate from the proper Court of authority to act in that capacity is required.
5. When the cause of death is unusual in any respect, the notice and proof of the death must conform to the circumstances of the case and the identity of the person must also be established. The Company reserves the right to require further information when it is deemed necessary.
6. The intervention of any third person is not necessary to obtain payment of the claim. Payment of fees or commissions to any person for services in making proof or collection of the amount due is unnecessary.

[Stamped]: Sep 23 8:19 AM 1944 Claim Dept.

CERTIFICATE OF IDENTITY

I hereby certify that I have been acquainted with Abe Lutz, the deceased, for 14 years, and how him to have been the identical person insured in the New England Mutual Life Insurance Company.

Name, J J Fisher

Address, 2017 N. Argyle St.

Note.—In case of accidental death or suicide, a certified copy of the testimony before, and verdict of the Coroner's Jury or the Medical Examiner, and all available information, including newspaper reports relating thereto, must accompany the proof of Death.

See Reverse Side for Attending Physician's Statement

Plaintiff's Exhibit No. 4)

ATTENDING PHYSICIAN'S STATEMENT

1. Name of the deceased Abe Lutz
2. Age last birthday about 65
3. Residence 1012 So. Highland Ave., L. A.
4. Occupation Unknown
5. Date of death May 28, 1944
6. Place of death His home. 1012 So. Highland Ave.
7. (a) Were you the attending physician? Yes
(b) If so, for how long? since January 16, 1937
8. State the cause of death with full details Acute coronary thrombosis
9. When was the disease first
 - (a) suspected? about a week or two before patient died.
 - (b) recognized or treated? About the same day.
 - (c) and by whom? by me
10. If death was due to violence, was it
 - (a) suicide? No
 - (b) homicide? No
 - (c) or accident? No
11. Was there a post-mortem examination or inquest? No
(If so, a certified copy of the report must be attached hereto.
See note Page 1.)
12. Did you see the deceased after death? Yes

Dated this 8th day of June 1944

M H Rosenfeld M.D.

(Plaintiff's Exhibit No. 4)

State of California)
) ss.
County of Los Angeles)

On this 9th day of June 1944, before me came the above-named M. H. Rosenfeld, known to me as a physician in regular standing, and made oath that the answers by him given to the foregoing questions are true and full, to the best of his knowledge and belief.

(Seal)

Wm. D. Story
Notary Public.

My Commission expires May 28th 1948

[Attach Notarial Seal]

[Endorsed]: Case No. 3930. New England vs. Lutz.
Plf's Exhibit No. 4. Date 3/23/45. No. 4 in Evidence
Clerk, U. S. District Court, Sou. Dist of Calif. P. D.
Hooser, Deputy Clerk.

[PLAINTIFF'S EXHIBIT NO. 5]

STEPHEN G. SEECH, M.D.

418 Westlake Professional Bldg.

2007 Wilshire Boulevard 83208

Los Angeles, California 1-15-37

Phone FIitzroy 0210 75c

Name Mr. A. Lutz

Address 220 S. St. Andrews Place

Date 1/15/37

R

Tabl. Phenobarbitol

P D Co. #699 grn ¼

No. L

S. 1 tablet evy 4 hrs.

(8-12-4-8)

[Illegible]

S G Seech M.D.

Reg. No. 7124

* * * * *

[Endorsed]: Case No. 3930. New England vs. Lutz.
Plf's Exhibit No. 5. Date 3/23/45. No. 5 Identification.
Date 3/23/45. No. 5 in Evidence. Clerk, U. S. District
Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[PLAINTIFF'S EXHIBIT NO. 6]

STEPHEN G. SEECH, M.D.

418 Westlake Professional Bldg.

2007 Wilshire Boulevard

Los Angeles, California

Phone: FIitzroy 0210

Name Mr. A. Lutz

Address 220 St Andrews Pl

Date 10/11/37

84017

10-11-37—75c

B

Sat. Sol. of K J

Sat.Sol.K.I.

Z j

S. 10 drops bid PC in $\frac{1}{2}$ glass of milk
(b.i.d)

[Illegible]

S G Seech M.D.

Reg. No. 7124

* * * * *

[Endorsed]: Case No. 3930. New England vs. Lutz.
Plf's Exhibit No. 6. Date 3/23/45. No. 6 Identification.
Date 3/23/45. No. 6 in Evidence. Clerk, U. S. District
Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[PLAINTIFF'S EXHIBIT NO. 7]

HENRY H. LISSNER, M.D. MAURICE H. ROSENFELD, M.D.
Reg. No. 168 Cardiology and Internal Medicine Reg. No. 4768
Res.: Office: 1908 Wilshire Blvd. Res.:
156 S. Hobart Blvd. Los Angeles, Calif. 163 N. McCadden Pl.
Rochester 1878 Phone: EXposition 1369 Day or Night— WYoming 8066
Hours by Appt.

Name Mr Lutz Date 6-1-42

Address 220 So St Andrews Pl Los Angeles, Calif.

R

89543
75¢—6-1-42.

H. T. Hy Nitro Glycerine gr 1/150
No 30

Sig.—Dissolve one tablet under tongue for heart pain
[Crest] M H Rosenfeld M.D.

* * * * *

[Endorsed]: Case No. 3930. New England vs. Lutz.
Plf's Exhibit No. 7. Date 3/23/45. No. 7 Identification.
No. 7 in Evidence. Clerk, U. S. District Court, Sou.
Dist. of Calif. P. D. Hooser, Deputy Clerk.

[PLAINTIFF'S EXHIBIT NO. 10]

Cedars of Lebanon Hospital
Los Angeles, California.

You Are Hereby Authorized to exhibit to bearer hereof hospital charts and records with reference to Abe Lutz, deceased.

This patient was admitted on or about May 15, 1944. Reference is made to hospital chart number A 1066.

Very truly yours,

M H Rosenfeld

Maurice H. Rosenfeld, M. D.

[Endorsed]: Case No. 3930. New England vs. Lutz. Plf's Exhibit No. 10. Date 3/23/45. No. 10 Identification. Date 3/23/45. No. 10 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[PLAINTIFF'S EXHIBIT NO. 11]

This will authorize you to furnish the bearer who represents The Equitable Life Assurance Society of the United States with any and all information you may have concerning the medical history, illness and treatments of Abe Lutz, deceased.

Harry Lutz

Name

1012 So Highland Ave Los Angeles Calif
Address

Son

Relationship

Dated June 7 1944

[Written]: MR

BC 746-43-1

[Endorsed]: Case No., 3930. New England vs. Lutz. Plf's Exhibit No. 11. Date 3/23/45. No. 11 Identification. Date 3/23/45. No. 11 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[PLAINTIFF'S EXHIBIT NO. 20]

This will authorize you to furnish the bearer who represents New England Mutual Life Insurance Co. of Boston, Mass. with any and all information you may have concerning the medical history, illness and treatments of Abe Lutz, deceased.

Harry Lutz

Name

1012 S. Highland,

Address

Los Angeles, Calif.

Son

Relationship

Date June , 1944

BC 746-43-1

[Endorsed]: Case No. 3930. New England vs. Lutz. Plf's Exhibit No. 20. Date 3/26/45. No. 20 Identification. Date 3/26/45. No. 20 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[PLAINTIFF'S EXHIBIT NO. 27]

FILED

MAR 21 1935

JAMES W. L. HAYES Clerk

Lutz Case

Unless right to change Beneficiary is reserved, a release of the interest of any Minor Beneficiary, under an order of court by a legally appointed Guardian, may be required before any change, surrender, or loan can be effected.

If the premium is paid on date Application is signed, the Policy will usually bear that date. If a different date is desired, indicate it clearly in the Application.

If the Automatic Premium Loan Provision is selected, a Request, which includes assignment, must be filed in duplicate with the Company before a Policy can be issued.

This Application is the property of the Company, to whom it must be returned after the Medical Examination is made and the Application completed. It must not be withdrawn or destroyed.

A Questionnaire on Aviation must be sent to the Home Office if the Proposed Insured intends to fly as a passenger more than five hours during the next twelve months, or if he has made more than six flights in any year with a maximum of twelve hours' duration, or if he has ever made more than twenty flights with a maximum of forty hours' duration; or if he has ever piloted a plane or seriously considered learning to do so; or if he is associated with a company manufacturing or operating aircraft; or if he is an officer of the Army, Navy, or the Marine Corps. A flight is one take-off and landing.

USE BLACK INK
WRITE LEGIBLY

DO NOT WRITE ABOVE THIS BORDER EXCEPT AS INDICATED

The First Mutual Life Insurance Company Chartered in America

Part I—Application to the New England Mutual Life Insurance Company

1172844

For Insurance on the Life of

Abe Lutz

Print name exactly as it should appear on the Policy

1 Residence Address No. 220 D. H. Andrews Los Angeles, Cal.	14 Form of Insurance Ordinary Life with cash <u>annuity</u>	15 Amount \$13,000	16 To whom payable Harry Lutz
2 Business Address No. 2500 Santa Fe Los Angeles, Cal.	17 To whom payable Harry Lutz	18 Relationship Son	19 Is the right to change the Beneficiary reserved to the Proposed (Insured)? No
3 To whom and where are premium notices to be sent? Name Harry Lutz Address 2500 Santa Fe Los Angeles, Cal.	4 City or Town Russia	5 State or Country U.S.A.	6 Date of Birth April 15 1878
7 Age nearest Birthday 64	8 Sex Male	9 Single, married, widowed or divorced Married	10 Occupation Self employed
11 Any chance contemplated No	12 Nature of business Sales + Construction	13 Nature of business Sensible	14 Apply Dividends under Option C Pay in cash. B. Apply to reduce premiums. C. Use to purchase paid-up additions. D. Accumulate at interest. Option C is not applicable to Renewable Term Policies.
15 Insurance in force on this Proposed Insurance (If space inadequate, send memorandum)	16 Amount 40000	17 Possible Indemnity 113,000	18 Number of years Provision to be applied upon failure to pay premiums (Renewable Term or "Paid-up") Extended term
19 Paid Agent No.	20	21	22

Reserve for HOME OFFICE USE, for ADDITIONS and AMENDMENTS

It is Hereby Agreed that this Application, including Part II a copy of which shall be attached to the Policy when issued, shall become a part of every Policy issued hereon, that acceptance of a Policy shall constitute ratification of any and all changes noted by the Company under "Additions and Amendments", and that the Insurance applied for shall not take effect unless and until this Application is approved by the Company at its Home Office and the first premium is paid while the Proposed Insured is in good health; provided that subsequent premiums shall be due and subsequent policy years begin as shown on the first page of the Policy. If, however, the first premium is paid with this Application, and it is so stated in answer to Question 24, the insurance shall take effect as stipulated in the Conditional Receipt.

Signed in my presence this 14 day of Nov.

1934

Stanley S. Seeds

Agent
Broker

Harry Lutz

Proposed Insured.

Applicant for Insurance.

Only one signature required if Proposed Insured and Applicant for Insurance are the same.

References
Name

DO NOT WRITE BELOW THIS LINE EXCEPT AS INDICATED

Address

Chartered 1835

THE UNIVERSITY OF CHICAGO
LIBRARY



THE UNIVERSITY OF CHICAGO
LIBRARY

(Plaintiff's Exhibit No. 27)

LOS ANGELES, CAL.
H & BUSE BLACK INK
WRITE LEGIBLYThe Medical Examiner must obtain, and insert in his own handwriting, an explicit answer to every question.
If space insufficient, enter additional details under Question 44, or send by letter and so state under Question 44.

Part II - Application to the New England Mutual Life Insurance Company

25 In what countries outside the United States do you intend to travel or reside? *none*

26 A How many serial flights have you made? *none*
 B How many flights do you expect to make in next twelve months? *none*
 C Have you piloted or do you intend to pilot aircraft? *none*

27 What other negotiations for Life or Disability Insurance are pending or contemplated? (State fully) *none*

28 Has insurance applied for on your life ever been declined, postponed, or modified to kind, amount or rate? (State fully) *Capital Life - declined 1 year ago - standard - issued since*

29 What illnesses, diseases or injuries have you had since childhood? Describe fully.

NAME OF DISEASE	DATE OF ATTACK	DURATION	SEVERITY	RESULTS
<i>myeloma</i>	<i>1918</i>	<i>2 weeks</i>	<i>ruled</i>	<i>good</i>
<i>syphil. & sds. - occasionally</i>	<i>time for</i>	<i>1 year</i>	<i>ruled</i>	<i>good</i>

30 What surgical operations have you had? *tonsillotomy - 1920 - good*

31 Have you ever rained or spit blood? *no*

32 In the last two years, how much has your weight increased? *about 5 pounds*
 Decreased? *no*

33 How long has your present weight been maintained? *about 3 months*

34 If any change in weight, give the reason *Reduced - by nervous activity*

35 Have you ever suffered from:
 A Indigestion? *no* B Insomnia? *no*
 C Nervous strain or depression? *no* D Overwork? *no* E Dizziness or fainting spells? *no*
 F Palpitation of heart? *no* G Shortness of breath? *no* H Pain or pressure in the chest? *no*

36 A Have you consulted, or been examined by, a physician or other practitioner within five years? *yes*
 B If so, give reasons, names of practitioner and details under 44

37 Have you ever had or been suspected of having:
 (One detail under 44)
 A Syphilis? *no* B Other genito-urinary disease? *no* C Sugar or albumin in urine? *no*
 D High or low blood pressure? *no* E Cancer or other tumor? *no* F Tuberculosis? *no*

38 State past and present use of wines, spirits and malt liquors: show amount and kind used daily. *Practically none*

39 Have you ever used opium, morphine, cocaine, or other narcotic drugs? *no*

40 Have you been exposed to tuberculosis in the last three years? *no*

41 Has any member of your family:
 A Been insane? *no* B Been epileptic? *no*
 C Committed suicide? *no* D Had tuberculosis? *no* E Had diabetes? *no*

42 A Have you ever changed your residence on account of your health? *no*
 B Have you ever been examined or treated in a hospital, sanatorium or other institution? *no*

43 FAMILY RECORD Give the most definite information possible. If impaired health is indicated, explain fully.

PARENTS, ETC.	LIVING		AGE	CAUSE OF DEATH	DATE	HOW LONG ILL	GRANDPARENTS	
	AGE	HEALTH					LIVING	DEAD
A Father			50	<i>age</i>	1936	<i>short</i>	F Father's Father	<i>Dead</i>
B Mother			57	<i>age</i>	1944	<i>short</i>	G Father's Mother	<i>Dead</i>
C Brothers	1	68	<i>good</i>				H Mother's Father	<i>Dead</i>
No. Living	0						I Mother's Mother	<i>Dead</i>
D Sisters	2	26	<i>good</i>					
No. Living	0	60	<i>good</i>					
(If none, so state)								
E Wife or Husband	60	<i>good</i>						

44 SPECIAL INFORMATION:
 36 Dr. Hanger of Haverfield - 1938 - August - 1942 - Physician & Commissioner - 1942
Signe Determination - report - 1942 - manual.
 30. *4 accidents - slightly prolonged - previous to tonsillotomy - 1920 - good - ruled.*

Signed at *Los Angeles* in my presence
 this *16* day of *November* 19*42*
John M. W. W. Medical Examiner.
Signature of the person examined.

Chartered 1835

Chartered 1835





DATE _____

M. I. B. INFORMATION

See M. I. B. on other work sheet

NOV 20 1942

SEE APPLICANT'S STATEMENT #28

[illegible]



(Plaintiff's Exhibit No. 27)

FILED

MAR 21 1945

EDMUND L. SMITH, Clerk

Plaintiff's Ex 2 for body
Bank

When completed, give to the Agent or transmit promptly to the General Agent.
If space insufficient, enter additional details under Question 71 or forward by letter and so state under Question 71.

Report of Medical Examiner

45 General appearance (Healthy or otherwise)		46 Race	63 Is there any evidence of past or present disease of:	
47 Completion	48 Color of hair	49 Color of eyes	A Brain or Nervous System?	B Heart or Blood Vessels?
50 Clench of chest with skin bare?	51 Clench of abdomen	52 Is temperature normal?	C Lungs or Respiratory Tract?	D Stomach or any Abdominal Organ?
53 Height (With shoes)	54 Weight (Fully dressed)	55 Did you personally measure?	E Kidneys or Genital-Urinary System?	F Eyes or Middle Ear?
56 Pulse: A Rate B Regular C Quality	57 Did you personally weigh?	58 Ribs: A Pectoral B Cervical C Ribs	G Skin or any other part of the body?	H Rheumatism or Gout?
59 Blood pressure: A Sys. B Dia. C Pulse	60 Blood pressure: A Sys. B Dia. C Pulse	61 Urinalysis: A Are you satisfied that the specimen is authentic? B Specific Gravity (Must be 1.020 or higher) C Albumin D Sugar	62 Describe any scars or other marks on the body.	I If so, has suitable treatment been given?
64 The following questions to be answered if Proposed Insured is a woman:		65 A Was the examination made in your office? B If not, where?		
A Number of children		66 Were you and the Proposed Insured alone?		
C In the case of pregnancy?		67 Has the examination been made under satisfactory conditions?		
E Has she passed the placenta?		68 Have you any other information which might affect the Company's decision? Give details under 71 or in letter to Home Office.		
F Has she had any miscarriages or any disease of the breast or generative organs?				

71 SPECIAL INFORMATION:

applicant has just been insured for \$10,000.00. He is 36 years old. He is a general contractor. He has been married for 10 years. He has two children. He is a member of the Masonic Lodge. He is a member of the Elks Lodge. He is a member of the American Legion. He is a member of the Veterans of Foreign Wars. He is a member of the United States Marine Corps. He is a member of the United States Army. He is a member of the United States Navy. He is a member of the United States Coast Guard. He is a member of the United States Air Force. He is a member of the United States Marine Corps. He is a member of the United States Army. He is a member of the United States Navy. He is a member of the United States Coast Guard. He is a member of the United States Air Force.

Examined at 1007 - 1st St. N. W. Washington, D. C. on 16th day of November, 1944. Medical Examiner M.D.

*NOTE: MICROSCOPIC ANALYSIS BY OUR CHEMIST is required when the insurance applied for, or together with that in force in this Company, exceeds \$30,000; when the Proposed Insured has passed his sixtieth birthday or is twenty-five per cent or more over normal weight. The specific gravity of the specimen must be 1.015 or higher.

In accordance with these requirements, a specimen has been transmitted to

Chemist

because of

Name of Chemist

Reason for microscopic analysis



(Plaintiff's Exhibit No. 27)

[Written]: Plaintiff's Ex. 3 for Iden RMK

[Stamped]: Medical Department Nov. 24, 1942

[Stamped]: Nov 23 2 54 PM 1942 Control Dept.

T. G. M.

NEW ENGLAND MUTUAL LIFE INSURANCE
COMPANY

of Boston, Massachusetts

MEDICAL DEPARTMENT
REPORT OF URINARY ANALYSIS

Passed by Abe Lutz

In presence of Dr. John M. Waste

Date passed 11-16-42

Reason for analysis Age and History of Blood Sugar

Specific Gravity 1023 Color . . . straw

Urea (per cent) 2.3% Reaction . . acid

(Omit if Sp. Gr. less than 1.015)

Diacetic Acid . none Bile Pigments none

Albumin . . . none (Quantitative (per cent)

Sugar . . . none (Quantitative (per cent)

Sediment: (Omit if Sp. Gr. less than 1.015)

(1) Crystalline very few calcium oxalate

(2) Casts none found

(3) Other organized elements

1 pus cell per 10 Standard Fields

Remarks:

[Stamped]: Medical Director Nov 24 1942 Under-
writing Dept. Nov 27 1942 M. H. Jackson

(Plaintiff's Exhibit No. 27)

Examined at 11-18-42 for Hays and Bradstreet Agency

Date 2:00 P.M. 19.....

Signed M E Bettin MD

Chemist.

[Endorsed]: Filed Mar. 21, 1945. Edmund L. Smith,
Clerk; by, Deputy Clerk.

[Written]: Plaintiff's Ex. 4 for Iden RMK

[Stamped]: Medical Department Nov 27 1942

[Stamped]: Nov 27 9 23 AM 1942 Control Dept.

[Stamped]: Dec 1 1942 M. A. L.

[Crest]

THE EQUITABLE LIFE ASSURANCE SOCIETY
of the United States

393 Seventh Avenue, New York

Thomas I. Parkinson, President

Medical Department

R. M. Daley, M. D., Medical Director

E. W. Beckwith, M. D.

W. A. Smith, M. D.

P. G. Denker, M. D.

B. C. Syverson, M. D.

O. W. King, M. D.

H. E. Ungerleider, M. D.

F. W. McSorley, M. D.

Assistant Medical Directors

Assistant Medical Directors

November 25, 1942

The Medical Director

New England Mutual Life Insurance Company

Boston, Massachusetts

(Plaintiff's Exhibit No. 27)

Re: Abe Lutz
born April 15, 1878

My dear Doctor:

This is in reply to your wire of November 19th asking us to forward you photostats of our papers, has been referred to this Department to furnish you with particulars of our file.

We regret that we are unable to comply with your request to send photostats inasmuch as it is not the Society's practice to submit copies of our papers to other companies on this type of case.

Mr. Lutz applied September 4, 1942 for \$5,000 Ordinary Life without features, in favor of the Hebrew Free Loan Society of Los Angeles, Calif., and an additional \$5,000 Ordinary Life without features on the owner form, with his son, Harry Lutz as owner and beneficiary.

He was examined the same day and at that time our examiner reported: "Height 5 ft. 8½ inches, by measurement, weight 180 pounds, by scale. Since April 1942 applicant has taken a three months' vacation and has been traveling. He has reduced about 15 pounds. He appears in good condition. He has consulted Dr. Maurice Rosenfeld and Dr. Henry Lisner and had a blood sugar test made; this was said to be good."

A specimen of urine analysed at our Home Office September 8th showed specific gravity 1.020, a few squamous cells and a moderate number of uric acid crystals.

Dr. Lisner forwarded us a certificate on September 3d stating that on August 11, 1942 the blood sugar test showed 111 mgm. per 100 c.c.

(Plaintiff's Exhibit No. 27)

On October 21, 1942 a review was completed and our examiner reported: "Between June 1942 and September 1942, the applicant took a trip with his family and drove his automobile. He gradually lost 15 pounds probably due to less eating and more exercise. He had been fat and soft and weighed 195 pounds. He has improved his health and looks good."

for: The Medical Director
New England Mutual Life Ins. Co.
re:: Abe Lutz

A blood sugar test was made October 21st and analysed at our Home Office October 23d. The results of this test are revealed in our report of November 9, 1942.

We approved at standard rates as applied for as a limit.

Our agency asked us if we would be willing to consider an additional \$20,000 Ordinary Life, but we refused inas much as we did not feel justified in increasing our liability on this risk.

Very truly yours,

Robert M. Daley, M.D.,

tr;sa

Medical Director R

[Endorsed]: Case No. 3930. New England vs. Lutz. Plf's Exhibit No. 27. Date 3/28/45. No. 27 in Evidence. Clerk. U. S. District Court, Sou. Dist of Calif. P. D. Hooser, Deputy Clerk.

[PLAINTIFF'S EXHIBIT NO. 29]

New England Mutual Life Insurance Company

Boston, Massachusetts

GENERAL AGENCY CONTRACT

THIS AGREEMENT, made and entered into at Boston, Massachusetts, this Twenty-eighth day of

June, 1938 by and between NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY of the City of Boston and Commonwealth of Massachusetts, of the first part, and Rolla R. Hays, Sr., Rolla R. Hays, Jr., and Raymond H. Bradstreet, of Los Angeles, California, doing business under the firm name of Hays and Bradstreet,

of the second part,

WITNESSETH, that the party of the first part hereby appoints the party of the second part its General Agents for the Counties of:

San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, San Diego, San Bernardino, Riverside and Imperial in the State of California,

subject to the right of the Company to change the territorial lines specified, to appoint other agents in said territory or to discontinue doing business in all or any part thereof.

SECTION 1. The said General Agents agree to devote ^{their} ~~the~~ entire time exclusively to the service of said Company, and neither directly nor indirectly to operate for any other Life Insurance Company, or engage in any other business or occupation; and that they will honestly and faithfully perform the duties of General Agents and conform to the rules of said Company, and the instructions and directions of its officers concerning its General Agencies and the method of conducting business, which are now in force or which may hereafter be given or adopted.

SECTION 2. The said General Agents ^{are} ~~is~~ hereby authorized to procure applications for Life Insurance Policies and Annuities and to forward the same to the Home Office of the Company for consideration; to deliver policies, premium receipts, premium notes and interest receipts upon the payment of the amount named therein, when the terms and conditions governing such delivery have been complied with; and to employ agents. The said General Agents shall be responsible to the said Company for all moneys, notes, receipts and policies collected by or passing through the hands of any and all agents or any other person employed by ~~him~~; and agrees to hold the Company harmless from and against any and all claims of all agents and persons employed by ~~him~~, and such agents shall have no claim whatsoever against said Company for commissions or otherwise.

SECTION 3. The said General Agents shall keep complete and accurate records of all transactions, and shall enter all receipts and disbursements on the day of payment, in the cash-book provided by the Company; and shall keep all funds received or collected for or on account of said Company separate and distinct from personal or other funds, and deposited in such bank or trust company as shall be designated by the said Company, to ~~the~~ credit as GENERAL AGENTS OF THE NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY; and shall not use such funds for any personal or other purpose whatsoever, but shall hold the same in trust for said Company, to be reported upon and transmitted to said Company in accordance with its rules and instructions.

SECTION 4. The said General Agents ^{are} ~~is~~ not authorized to make, alter or discharge contracts, waive forfeitures, or incur any liability on behalf of or against said Company in any case whatsoever.

SECTION 5. The said General Agents shall keep deposited with the Company a satisfactory bond of a Guaranty Company selected by the party of the first part, for the faithful performance of all duties pertaining to the Agency.

SECTION 6. All books, records, registers, documents and papers, also office furniture and fixtures, are and shall be the property of the Company, and shall at all times be subject to the use and control of its officers or other representatives, and, in the event of the termination of the Agency from any cause whatsoever, shall be turned over to said Company or its authorized agent, on demand.

SECTION 7. The Company will make available such a supply of canvassing and advertising documents, stationery, books, records and blanks as it may deem necessary to conduct properly the business of the Agency.

SECTION 8. The said General Agents shall not, nor shall any agent or other person in ~~his~~ ^{their} employ, be permitted to print, publish or distribute any advertisement, circular, statement or other document relating to the business or standing of the said Company, or any other Life Insurance Company, unless the same shall have been previously examined, approved and authorized in writing by an officer of the Company.

CONTENTS

Original Articles
The Effect of the War on the Medical Profession
The Medical Profession and the War
The Medical Profession and the War
The Medical Profession and the War

Editorial
The Medical Profession and the War

Correspondence
The Medical Profession and the War

Obituary
The Medical Profession and the War

Announcements
The Medical Profession and the War

Index
The Medical Profession and the War

Advertisements
The Medical Profession and the War

Subscription Service
The Medical Profession and the War

Advertising Rates
The Medical Profession and the War

Editorial Notes
The Medical Profession and the War

Editorial Notes
The Medical Profession and the War

Editorial Notes
The Medical Profession and the War

Editorial Notes
The Medical Profession and the War

Editorial Notes
The Medical Profession and the War

Editorial Notes
The Medical Profession and the War

Editorial Notes
The Medical Profession and the War

(Plaintiff's Exhibit No. 29)

SECTION 9. Subject to the provisions of this Agreement, the said Company hereby agrees to pay or allow the said General Agents on policies placed hereunder, on first year premiums actually collected and remitted by ^{them} a commission, as follows:

On LIFE POLICIES, continuous annual premium payments	55%
On LIFE POLICIES of 30 or more limited premium payments	55%
On LIFE POLICIES of 19 to 29 limited premium payments, both inclusive	50%
On LIFE POLICIES of 15 to 18 limited premium payments, both inclusive	40%
On LIFE POLICIES of 10 to 14 limited premium payments, both inclusive	30%
On LIFE POLICIES of 5 to 9 limited premium payments, both inclusive	20%
On LIFE POLICIES, single premium payment	5%
On NEW ENGLANDER 1-2-3 LIFE POLICIES	20%
On NEW ENGLANDER FAMILY INCOME POLICIES	50%
On ENDOWMENTS of 30 years and over, annual premium payments	50%
On ENDOWMENTS of 20 to 29 years, annual premium payments, both inclusive	40%
On ENDOWMENTS of 15 to 19 years, annual premium payments, both inclusive	30%
On ENDOWMENTS of 10 to 14 years, annual premium payments, both inclusive	20%
On ENDOWMENTS of 30 or more years, 20 limited premium payments	40%
On ENDOWMENTS of 25 or more years, 15 limited premium payments	35%
On ENDOWMENTS of 20 or more years, 10 limited premium payments	20%
On ENDOWMENTS of 10 or more years, single premium payment	5%
On ENDOWMENTS of 5 years, single premium payment	2½%
On NEW ENGLANDER RETIREMENT INCOME POLICIES	According to Endowment Period
On 5 AND 10-YEAR TERM POLICIES	30%
On SINGLE PREMIUM ANNUITIES, with or without refund	3%
On RETIREMENT ANNUITIES, annual premium payments; ages 50 or under	22½%
On RETIREMENT ANNUITIES, annual premium payments; ages 51-60 inclusive	20%
On RETIREMENT ANNUITIES, annual premium payments; ages 61 or over	15%
On Life and Endowment Policies which have an extra premium providing a deferred annuity, the first commission on that part of the premium providing for the annuity will be seven and one-half per cent; but on renewal premiums the schedule rate as per Section 10 below will be allowed on the combined premium, and upon the expiration of the renewal commission period the rate as per Section 11 will be allowed on the combined premium.	

Special rate to be made in each case on any other form of policy.

SECTION 10. Also a commission of seven and one-half per cent on the first to tenth renewals, inclusive, on policies on the Life and Term plans and on Endowments of twenty or more annual premium payments, and five per cent on the first to tenth renewals, inclusive, on Endowments of less than twenty annual premium payments, and five per cent on the first to ninth renewals, inclusive, on annual premium Retirement Annuities, placed by said General Agents when actually collected and remitted by ^{them} to the said Company.

SECTION 11-A. On policies placed by said General Agents hereunder and on policies which may be transferred to the Agency, upon which the renewal commissions payable under the provision of Section 10 hereof have expired: a collection commission of two and one-half per cent will be allowed as compensation upon premiums on Insurance Policies and two per cent upon premiums on annual premium Retirement Annuities, if and when collected at the request of, and actually remitted by ^{them} to, the Company, but not otherwise.

B. On policies issued through and now in force at the Agency, but not placed by said General Agents a collection commission of two and one-half per cent will be allowed upon premiums of issues prior to January 1, 1926 and bearing policy numbers below No. 547,100, and a collection commission of one per cent upon premiums on issues subsequent to January 1, 1926 and bearing policy numbers above No. 547,100 and upon annual premium Retirement Annuities, if and when collected at the request of, and actually remitted by ^{them} to, the Company, but not otherwise.

SECTION 12. When five or ten-year Term policies are changed to other forms after two years from the date of issue or renewal, or when New Englander 1-2-3 Life policies are automatically converted or are changed to other Life or Endowment forms after one year, first and renewal commissions will be allowed upon premiums on the new policy, according to the schedule of Sections 9 and 10 hereof; but if such change is made during the two-year or one-year period specified, the commission paid on the first premium of the original policy will be deducted from the commission payable on the first premium on the new policy.

SECTION 13. No commissions will be paid or allowed for the collection of interest; or on any premium for temporary insurance; or on any premium or premium note, or loan note deducted by the Company in settlement of any cash, paid-up insurance or extended insurance value, or matured endowment. No commission will be paid on amounts collected for difference in reserves to change any Life or Endowment policy or Annuity contract after the end of the first policy year.

SECTION 14. The commissions named in Sections 9, 10, 11 and 12 shall be in full for all services rendered said Company as General Agents. No extra charges shall be made for general or special services, except by the written agreement of said Company.

SECTION 15. The Company will pay medical examination fees. Taxes and license fees imposed by law or ordinance will be paid by the Company provided the amount is within such limits as may be adopted by the Company. All bills for the same must be sent to the Home Office for approval.

SECTION 16. The said General Agents will be allowed to charge in ^{their} ~~his~~ accounts to the Company the sum of See Supplemental Agreement dollars per month for the payment of office rent and toward the payment of clerk hire, telephone, postage, exchange, light, heat, repairs to furniture and fixtures, and the cleanly and orderly maintenance of the Agency Office. No other expense of any kind or nature shall be charged to, or will be paid or allowed by, the Company; and the right is reserved by the Company to change said allowance at any time.

SECTION 17. It is hereby agreed by the said General Agents that when the lease of the Agency Office is made or held in ~~his~~ ^{their} name, such lease will be transferred and assigned to the Company upon demand.

SECTION 18. It is expressly agreed between the parties hereto that in case said General Agents ^{or any of them} shall violate any of the conditions of this Agreement, or shall withhold or convert to ~~his~~ ^{his own} use or for the benefit of others any moneys, securities, policies, premium loan notes, or receipts belonging to the said Company, this Agreement and any renewal or collection commissions and all claims whatsoever accruing hereunder to the said General Agents shall become forfeited and void, and said Agency shall at once become terminated without notice.

SECTION 19. The Company expressly reserves the right to terminate this Agreement at any time upon giving sixty days' notice in writing of its intention ^{so to do, and if all the conditions thereof have been faithfully complied with by the said General Agents} ~~to do so~~ ^{they shall have the same right upon the same notice, but not otherwise.}

SECTION 20. In the event that this Agreement shall be terminated by either party hereto in accordance with the provisions of Section 19 hereof, or in case of the death of ^{any of} the said General Agents while this Agreement is in full force with its conditions unbroken in any particular, then in lieu of all payments, renewals and collection commissions stipulated herein, and in full settlement of all claims hereunder, there will be paid or credited to said General Agents ^{under the} ~~their~~ legal representatives ^{or any of them} ~~on each of the then unexpired renewals referred to in Section 10 aforesaid,~~ a commission of six and one-half per cent on renewal premiums on policies on the Life or Term plan and on Endowments of twenty or more annual premium payments, and four per cent on Endowments of less than twenty annual premium payments and on annual premium Retirement Annuities; and the full schedule rate of commission on first year premiums which may become due after the termination of the agency on policies written before such termination; such commissions being payable only if, as, and when said premiums shall have been paid to the Company.

Calculation of commissions payable under this section will be made quarterly, and a certified list of policies upon the premiums of which commission is claimed by or on behalf of the General Agents or any sub-agent must be furnished to the Company at the termination of this Agreement.

SECTION 21. The Company may at any time offset against commissions due or payable to the General Agents ^{or any of them} under this Agreement any indebtedness due or to become due from ~~him~~ ^{them or any of them} to the said Company; and in the event of the termination of this Agreement the Company is authorized to pay to any sub-agent any commission which may be due, or which may thereafter become due, from the General Agents to such sub-agent and to deduct such payments from any amount due the said General Agents ^{or any of them} under this Agreement; but nothing herein shall be construed as binding the Company to make such payments.

SECTION 22. Any assignment or attempted assignment of this Agreement, or of any of the claims or rights accruing hereunder by the said General Agents shall be void unless assented to in writing by the said Company.

This Agreement shall take effect the First day of August, 1938

IN WITNESS WHEREOF, the said NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY has hereto affixed its corporate name and seal by GEORGE L. HUNT, its Vice President, and the said General Agents ~~has~~ ^{have} hereunto set ~~his~~ ^{their} hand; and seal; the day and year first above written.

NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY,

by

George L. Hunt

Vice President.

Raymond R. Hay Jr.

General Agent

Raymond R. Hay Jr.

Raymond H. Bradstreet

(Plaintiff's Exhibit No. 29)

Dec. 1-22.

General Agency Contract.

NEW ENGLAND MUTUAL
LIFE INSURANCE COMPANY

WITH

Hays and Bradstreet

Effective Date **August 1, 1938.**

Received from the

Library of the
University of California

Library of the

University of California

(Plaintiff's Exhibit No. 29)

THIS SUPPLEMENTARY AGREEMENT, made and entered into this Twenty-eighth day of June, 1938 by and between the NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, of the City of Boston, and State of Massachusetts, of the first part, and Hays and Bradstreet, of the City of Los Angeles, and State of California, General Agents, of the second part, which is hereby made a part of and annexed to an Agreement between said parties, executed June 28, 1938 and subject to all the conditions, covenants, and agreements therein contained,

WITNESSETH, that said Agreement is hereby amended by adding to Section 9 thereof the following revised schedule of commissions, which shall supersede the original schedule as to policies submitted after the date of this Supplementary Agreement.

On LIFE POLICIES, continuous annual premium payments	55%
On LIFE POLICIES of 30 or more limited premium payments	55%
On LIFE POLICIES of 19 to 29 limited premium payments, both inclusive	50%
On LIFE POLICIES of 15 to 18 limited premium payments, both inclusive	40%
On LIFE POLICIES of 10 to 14 limited premium payments, both inclusive	30%
On LIFE POLICIES of 5 to 9 limited premium payments, both inclusive	20%
On LIFE POLICIES, single premium payment	4%
On NEW ENGLANDER 1-2-3 LIFE POLICIES	20%
On NEW ENGLANDER FAMILY INCOME POLICIES	50%
On ENDOWMENTS of 40 years and over, annual premium payments	50%
On ENDOWMENTS of 38 and 39 years, annual premium payments	49%
On ENDOWMENTS of 36 and 37 years, annual premium payments	48%
On ENDOWMENTS of 34 and 35 years, annual premium payments	47%
On ENDOWMENTS of 32 and 33 years, annual premium payments	46%
On ENDOWMENTS of 30 and 31 years, annual premium payments	45%
On ENDOWMENTS of 29 years, annual premium payments	44%
On ENDOWMENTS of 28 years, annual premium payments	43%
On ENDOWMENTS of 27 years, annual premium payments	42%
On ENDOWMENTS of 26 years, annual premium payments	41%
On ENDOWMENTS of 25 years, annual premium payments	40%
On ENDOWMENTS of 24 years, annual premium payments	39%
On ENDOWMENTS of 23 years, annual premium payments	38%
On ENDOWMENTS of 22 years, annual premium payments	37%
On ENDOWMENTS of 21 years, annual premium payments	36%
On ENDOWMENTS of 20 years, annual premium payments	35%
On ENDOWMENTS of 19 years, annual premium payments	34%
On ENDOWMENTS of 18 years, annual premium payments	33%
On ENDOWMENTS of 17 years, annual premium payments	32%
On ENDOWMENTS of 16 years, annual premium payments	31%
On ENDOWMENTS of 15 years, annual premium payments	30%
On ENDOWMENTS of 14 years, annual premium payments	28%
On ENDOWMENTS of 13 years, annual premium payments	26%
On ENDOWMENTS of 12 years, annual premium payments	24%
On ENDOWMENTS of 11 years, annual premium payments	22%
On ENDOWMENTS of 10 years, annual premium payments	20%
On ENDOWMENTS of 30 or more years, 20 limited premium payments	40%
On ENDOWMENTS of 25 or more years, 15 limited premium payments	35%
On ENDOWMENTS of 20 or more years, 10 limited premium payments	20%
On ENDOWMENTS of 10 or more years, single premium payment	4%
On NEW ENGLANDER RETIREMENT INCOME POLICIES	According to Endowment Period
On MULTIPLE INCOME POLICIES	According to Endowment Period
On 5 and 10-YEAR TERM POLICIES	30%
On SINGLE PREMIUM ANNUITIES, with or without refund	23%
On RETIREMENT ANNUITIES, annual premium payments; ages 50 or under	22%
On RETIREMENT ANNUITIES, annual premium payments; ages 51-60 inclusive	20%
On RETIREMENT ANNUITIES, annual premium payments; ages 61 or over	15%

On Life and Endowment Policies which have an extra premium providing a deferred annuity, the first commission on that part of the premium providing for the annuity will be seven and one-half per cent; but on renewal premiums the schedule rate as per Section 10 below will be allowed on the combined premium, and upon the expiration of the renewal commission period the rate as per Section 11 will be allowed on the combined premium.

Special rate to be made in each case on any other form of policy.

IN WITNESS WHEREOF, the said NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY has hereto affixed its Corporate name and seal by GEORGE L. HUNT, its Vice President, and the said parties of the second part have hereunto set their hands and seal the day and year first above written.

NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY,

By

George L. Hunt

Vice President.

Walter L. Hays

General Agents

Walter L. Hays

Walter L. Hays



(Plaintiff's Exhibit No. 29)

This Supplementary Agreement, made and entered into this 3rd

day of January 19 45 by and between the NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, of the City of Boston, and State of Massachusetts, of the first part, and -Hays & Bradstreet- of the City of Los Angeles and State of California, General Agent, for Southern California of the second part, which is hereby made a part of and annexed to an agreement between said parties, executed June 26, 19 38 and subject to all the conditions, covenants, and agreements therein contained,

Witnesseth, that: The said General Agents will be allowed and are hereby authorized to charge for expenses stipulated in and subject to the provisions of Section 16 ten per cent (10%) of the first-year premiums collected and remitted in their accounts on life and endowment policies of ten or more annual premium payments and upon policies on the five-year and ten-year term plan and on the difference between the premium on the life and endowment policies and the premium on the five- or ten-year term policies when such term policies are converted, irrespective of year of conversion, and on the difference between the term premium and the life premium upon conversion of New Englander policies, irrespective of year of conversion, subject to the conditions hereinafter mentioned.

When policies are issued and placed on the Special Class basis, whether retained or re-insured, the total expense allowance which the Company will hereafter pay to the General Agents will be 7 1/2% on first-year premiums collected. When all or part of policies issued and placed at standard rates are re-insured, the total expense allowance which the Company will hereafter pay to the General Agents will be 10% on first-year premiums collected on the following classes:

- a. The amount issued, but not in excess of the Company's retention limit, when the Company does not restrict the amount which it is willing to retain to less than its retention limit.
- b. The amount retained by the Company when the Company restricts the amount which it is willing to retain to less than its retention limit.
- c. The amount issued, but not in excess of \$10,000, when the amount is entirely re-insured and the Company carries no insurance on the life.

No expense allowance on risks involving re-insurance or Special Class business will be paid, except as provided above.

The above agreement is effective as of January 1, 1945.

~~In witness whereof~~, the said NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY has hereto affixed its Corporate name and seal by

-George L. Hunt-

its Vice President,

and the said parties of the second part have hereunto set their hands and seals the day and year first above written

NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY

George L. Hunt Vice President
Race R. Hays, Jr.
Rallor Hays Jr.
Raymond H. Bradstreet

[Endorsed]: Case No. 3930. New England vs. Lutz.
 Plf's Exhibit No. 29. Date 3/29/45. No. 29 in Evidence.
 Clerk, U. S. District Court, Sou. Dist of Calif. P. D.
 Hooser, Deputy Clerk.

The work of the year has been devoted to the study of the history of the Church in the United States, and to the preparation of a history of the Church in the United States, from the first settlement to the present time. The work has been divided into two parts, the first part dealing with the history of the Church in the United States, and the second part dealing with the history of the Church in the United States, from the first settlement to the present time.

The first part of the work has been devoted to the study of the history of the Church in the United States, and to the preparation of a history of the Church in the United States, from the first settlement to the present time. The work has been divided into two parts, the first part dealing with the history of the Church in the United States, and the second part dealing with the history of the Church in the United States, from the first settlement to the present time.

The second part of the work has been devoted to the study of the history of the Church in the United States, and to the preparation of a history of the Church in the United States, from the first settlement to the present time. The work has been divided into two parts, the first part dealing with the history of the Church in the United States, and the second part dealing with the history of the Church in the United States, from the first settlement to the present time.

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[DEFENDANTS' EXHIBIT C]

Department of Health

CITY OF LOS ANGELES

DIVISION OF VITAL STATISTICS

CERTIFIED COPY OF LOCAL RECORD

This is to Certify that the attached is a full, true, and correct copy

of the certificate of

of

which is on file in this office, and of which I am the legal custodian.

In Testimony Whereof witness my hand and seal of office, at Los Angeles,

California, this

24

day of

Jan

19

45

Fee \$1.00

PAID

1

Gene M. Webb, M.D.

Registrar of Vital Statistics

By

Salvador L. L. L.

Deputy Registrar

No.

297261

(Defendants' Exhibit C)

1. FULL NAME Abe Lutz		DISTRICT NO 1901 REGISTRATION NO 8857	
2. PLACE OF DEATH (a) COUNTY Los Angeles (b) CITY OR TOWN Los Angeles (c) NAME OF HOSPITAL OR INSTITUTION 1012 So. Highland Ave. (d) LENGTH OF STAY (SPECIFY WHETHER YEARS MONTHS OR DAYS) IN HOSPITAL OR INSTITUTION 33 Yrs IN CALIFORNIA 33 Yrs		3. USUAL RESIDENCE OF DECEASED (a) STATE California (b) COUNTY Los Angeles (c) CITY OR TOWN Los Angeles (d) STREET NO. 1012 So. Highland Ave.	
4. (a) IF VETERAN, NAME OF WAR No (b) IF FOREIGN BORN, HOW LONG IN THE U. S. A. 52 YEARS		20. DATE OF DEATH MONTH May DAY 28 YEAR 1944 HOUR 11 P.M. MINUTE	
5. (a) SOCIAL SECURITY NO None (b) COLOR OR RACE Cauc. (c) SINGLE MARRIED, WIDOWED OR DIVORCED Married (d) NAME OF HUSBAND OR WIFE Rose Lutz (e) AGE OF HUSBAND OR WIFE IF ALIVE 63 YEARS		21. MEDICAL CERTIFICATE I HEREBY CERTIFY, THAT I ATTENDED THE DECEASED FROM 1-16 TO 5-28 THAT I LAST SAW HIM ALIVE ON 5-28 AND THAT DEATH OCCURRED ON THE DATE AND HOUR STATED ABOVE.	
6. BIRTHDATE OF DECEASED (Unknown) AGE 65 YES MONTHS DAYS HRS MINS		22. CORONER'S CERTIFICATE I HEREBY CERTIFY, THAT I HELD AN INQUIRY INTO THE DEATH OF THE DECEASED AND FROM SUCH ACTION THAT DECEASED CAME TO DEATH ON THE DATE AND HOUR STATED ABOVE.	
7. BIRTHPLACE Russia USUAL OCCUPATION Electrician INDUSTRY OR BUSINESS Steel Business NAME Joseph Lutz BIRTHPLACE Brown Russia MAIDEN NAME Ellie Unknown BIRTHPLACE Unknown Russia INFORMANT Edward Friedman ADDRESS 3745 S. Cotton		23. IF DEATH WAS DUE TO EXTERNAL CAUSES, FILL IN THE FOLLOWING: (a) ACCIDENT, SUICIDE, OR HOMICIDE? (b) DATE OF INJURY (c) WHERE DID INJURY OCCUR? (d) DID INJURY OCCUR IN OR ABOUT HOME OR YARN IN INDUSTRIAL PLACE OR IN PUBLIC PLACE? (e) MEANS OF INJURY	
8. (a) PLACE OF BURIAL Heavenly Bodies Cemetery (b) DATE May 31, 1944 (c) PLACE OF BURIAL Heavenly Bodies Cemetery (d) EMBALMER'S SIGNATURE Charles J. Henry LICENSE NO. 2304 (e) FUNERAL DIRECTOR Charles J. Henry ADDRESS 222 Washington Blvd BY Alfred Collock		24. CORNER'S SIGNATURE W. B. Rausch (SPECIFY RACE) ADDRESS 1908 Wilshire DATE 6-2-44	

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

CERTIFICATE OF DEATH

U. S. DEPT. OF COMMERCE
BUREAU OF THE CENSUS

Case No. 3930
New England vs. Lutz
Heb's EXHIBIT C
 Date 3/23/45 No. C IDENTIFICATION
 Date 3/23/45 No. C IN EVIDENCE
 Clerk, U. S. District Court, Sou. Dist. of Cal.
P. J. Hooser Deputy Clerk

No. **11180**
 UNITED STATES CIRCUIT COURT OF APPEALS
 FOR THE NINTH CIRCUIT
FILED

NOV 13 1945

PAUL P. O'BRIEN
 CLERK

[DEFENDANTS' EXHIBIT D]

[Written]: Defts' Ex 1 for Iden. RMK Ex 4 for Iden.

November 16, 1942

Mr. Doane Arnold
Manager, Underwriting Department
New England Mutual Life Insurance Company
501 Boylston Street
Boston, Massachusetts

Re: Abe Lutz

Dear Doane:—

Mr. Stanley Leeds, a full time representative of the Equitable, has recently written some insurance on the life of the above Abe Lutz on which they issued their policy number 11568673.

Part of this business is going to be given to the New England Mutual, and as I understand it, there is some history, and as a consequence the local office of the Equitable wired their Home Office to turn all papers over to the New England Mutual, and in a wire just received the Equitable stated they would be glad to do so, but would prefer that our Home Office make this request of the Home Office of the Equitable. Would you, therefore, be kind enough to get in touch with them for the necessary papers, and in the meantime we shall hope to forward an examination on our blank completed by their chief examiner here, Dr. Waste.

(Defendants' Exhibit D)

I shall appreciate your usual courtesy on this, Doane, as it would seem to be quite a decent case, and we hope of course, to get as much as possible for the New England Mutual.

Yours very truly

HAYS & BRADSTREET

Harold P. Morgan

HPM:LM

Ass't. General Agent

[Endorsed]: Filed Mar. 21, 1945. Edmund L. Smith, Clerk; by, Deputy Clerk.

[Written]: Defts' & Counter Claimant's Ex 2 for Ident.
3-2-45 W. H. Davis Notary Public

Dr. M. H. Rosenfeld
Los Angeles, Cal.

In making application for life insurance I find that I am unable to give sufficiently detailed information concerning my past medical history with particular reference to Physical Examination & Findings One Month Ago for

(Fill in name of illness or injury)

which I consulted you in.....

May I ask you to assist me by answering the questions listed below? This is a personal request from me and your courtesy will be appreciated. Please forward your reply in the enclosed envelope to the Medical Director of the Equitable Life Assurance Society.

Very truly yours,

.....
.....

Address

(Defendants' Exhibit D)

To the Physician or Hospital: Please detach this portion
of the form for your records.

ABE LUTZ

To the Medical Director

The Equitable Life Assurance Society of the United States
393 Seventh Avenue
New York, N. Y.

At the request of Abe Lutz I submit the following in-
formation regarding the illness for which I treated
him (her).

Diagnosis: -----

Brief History of Illness: (Please give dates)-----

Nature of Treatment: (Date of any operations)-----

Length of Treatment: -----

Date of Discharge: -----

Condition When Discharged: -----

Result of Any X-Ray Study, Laboratory Work or Special
Tests: (Including results of microscopic examina-
tion of any tissue removed by operation)

Blood sugar determination 115 Mill.

Nature of Any Other Condition for Which Patient Has
Consulted Me: -----

Date..... Signed.....M. D.

11-1603-LOS AW

[Endorsed]: Filed Mar. 21, 1945. Edmund L. Smith,
Clerk; by, Deputy Clerk.

(Defendants' Exhibit D)

[Written]: Defendants' Ex 3 for Iden. RMK.

Boston, Massachusetts

November 19, 1942

EQUITABLE LIFE ASSURANCE SOCIETY
New York, N. Y.

WOULD APPRECIATE YOUR FORWARDING
COPIES OF PAPERS ABE LUTZ BORN 15 APRIL,
1878.

NEW ENGLAND MUTUAL LIFE INSURANCE
COMPANY

DA:B

[Stamped]: Underwriting Dept. Nov. 19, 1942. A. M.
Fardy.

[Endorsed]: Filed Mar. 21, 1945. Edmund L. Smith,
Clerk; by, Deputy Clerk.

[Written]: Defts. Ex 4 for Iden. RMK

NEW ENGLAND MUTUAL
Life Insurance Company [Crest] Boston, Massachusetts

Hays & Bradstreet, General Agents

609 South Grand Avenue

Los Angeles, California

Telephone: Tucker 1211

Rolla R. Hays, Sr.

Rolla R. Hays, Jr.

R. H. Bradstreet

Harold P. Morgan

Assistant General Agent

Harry W. Day

Office Manager

November 16, 1942

(Defendants' Exhibit D)

Mr. Doane Arnold
Manager, Underwriting Department
New England Mutual Life Insurance Company
501 Boylston Street
Boston, Massachusetts

Re: Abe Lutz

Dear Doane:—

Mr. Stanley Leeds, a full time representative of the Equitable, has recently written some insurance on the life of the above Abe Lutz on which they issued their policy number 11568673.

Part of this business is going to be given to the New England Mutual, and as I understand it, there is some history, and as a consequence the local office of the Equitable wired their Home Office to turn all papers over to the New England Mutual, and in a wire just received the Equitable stated they would be glad to do so, but would prefer that our Home Office make this request of the Home Office of the Equitable. Would you, therefore, be kind enough to get in touch with them for the necessary papers, and in the meantime we shall hope to forward an examination on our blank completed by their chief examiner here, Dr. Waste.

I shall appreciate your usual courtesy on this, Doane, as it would seem to be quite a decent case, and we hope, of course, to get as much as possible for the New England Mutual.

Yours very truly

HAYS & BRADSTREET

Harold P. Morgan

HPM:LM

Ass't. General Agent

The First Mutual Life Insurance Company

Chartered in America—1835

(Defendants' Exhibit D)

[Stamped]: Underwriting Dept. Nov 19 1942 A. M.
Fardy

[Letterhead of New England Mutual]

November 17, 1942

Mr. Doane Arnold
Manager, Underwriting Department
New England Mutual Life Insurance Company
501 Boylston Street
Boston, Massachusetts

Re: Abe Lutz

Dear Doane:—

On the 16th of November, I wrote you a letter regarding the above case, and I am now pleased to enclose application in the amount of \$13,000.00, which has been examined as I indicated by the Chief Examiner of the Equitable, Dr. Waste, and under the circumstances, I sincerely hope that his examination will be accepted. I found that it would have been impossible to have secured this business if we had insisted upon an examination by our own Chief Examiner.

You will notice that the request is made to date this policy to October 13th to save age 64, and you will note the further request that the policy be issued with an eleven month's pro-rate premium, and annually, thereafter.

In addition to this, will you be kind enough to have issued an additional contract of \$8,000.00 dated October 13th with a pro-rate premium to August 13th, 1943, and a \$5,000.00 policy dated October 13th, 1942 with a pro-rate premium to August 13th, 1943.

(Defendants' Exhibit D)

These latter two policies will be, if placed, accepted on the ownership form, two sons-in-law to be the applicant for such insurance, and the policies would be returned with applications correctly completed, substituted for the original.

This looks like a very fine piece of business, and I will appreciate your cooperation.

May I ask for a wire of approval?

Yours very truly

HAYS & BRADSTREET

Harold P. Morgan

HPM:LM

Enc.

The First Mutual Life Insurance Company

Chartered in America—1835

[Stamped]: Underwriting Dept. Nov 19 1942 A. M. Fardy.

[Endorsed]: Filed Mar. 21, 1945. Edmund L. Smith, Clerk; by, Deputy Clerk.

[Written]: Defts Ex 5 for Iden RMK

December 1, 1942

NEW ENGLAND MUTUAL LIFE INSURANCE
COMPANY

609 South Grand Avenue

Los Angeles

California

ABE LUTZ APPROVED \$13,000. LETTER FOL-
LOWS REGARDING ADDITIONAL.

UNDERWRITING DEPARTMENT

SH:B

(Defendants' Exhibit D)

BOSTON, MASS., APRIL 8, 1943

NEW ENGLAND MUTUAL LIFE INSURANCE
COMPANY

609 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA

ABE LUTZ REGRET MUST DECLINE ACCOUNT
OF ADDITIONAL CONFIDENTIAL INFORMATION
RECEIVED SINCE ORIGINALLY ISSUED.

NEW ENGLAND MUTUAL LIFE INSURANCE
COMPANY.

MEDICAL
MR/GF

[Letterhead New England Mutual]

[Written]: Plaintiff's Ex 7 for Iden RMK

[Stamped]: Slip Apr—7-43 Apr 7 9 46 AM 1943
Control Dept. Assoc. Med. Director Apr 8-1943 Un-
derwriting Dept. Apr 8-1943 M. H. Jackson Apr 8-1943
Declined M.A.L. Answer Over G.F. Apr 8 1943

April 5, 1943

Dr. Frederick R. Brown
Associate Medical Director
New England Mutual Life Insurance Company
501 Boylston Street
Boston, Massachusetts

Re: Abe Lutz—#1,174369

Defendants' Exhibit D)

Dear Dr. Brown:—

Will you be kind enough to refer to the file in connection with the above case. The Agent informs us that due to the pressure of business that existed when this application was submitted, he was unable to follow through with the requirements that you desired, but is perfectly willing to go through with them now. We are wondering whether or not it would be more satisfactory to proceed in an effort to secure attending physicians's statement, or whether, because of this further lapse of time, you would prefer a blood sugar tolerance test made now by our own chemist.

We want to secure not only the original \$13,000 insurance asked for, but can effect delivery of that amount representing our limit at this age. In as much as this applicant will be sixty-five years old on the 15th instant, we would like to proceed as quickly as possible, and will appreciate your wire outlining requirements and amounts we will consider not later than Wednesday, the 7th instant.

Yours very truly

HAYS & BRADSTREET

Harold P. Morgan

HPM:LM

The First Mutual Life Insurance Company
Chartered in America—1835

[Written]: Defts Exhibit 8 for Iden RMK

Boston 17, Massachusetts

ATTENDING PHYSICIAN'S STATEMENT

(Agency)

(Date)

To Doctor

(Name of physician) (Address)

Mr. _____, of _____

(Name of applicant) (Address)

an applicant to this Company, states that he consulted you
on or about

....., for

(Date)

(Reason)

To determine his insurability, the Company needs the details.

Mr. _____ authorizes

(Name of applicant)

you to give this information.

Please mail your reply direct to the Company at Boston, Mass. A fee of \$2.00 is allowed for this service.

HAROLD M. FROST, M. D.,

Medical Director.

Reply

(If this space is inadequate, continue on back)

Defendants' Exhibit D)

1. Give dates of all consultations.
2. The signs and symptoms, your diagnosis and duration of illness.
3. What treatment?
4. Approximate date of cure.
5. The result of any laboratory investigation.
6. Has the above-named consulted you for any other condition than that indicated above? If so, give details.

.....
(Signature attending physician)

.....
(Date)

To Doctor:
(Name of physician)

.....
(Date)

I hereby authorize you to give the Medical Director of the New England Mutual Life Insurance Company any information he requests as to any and all consultations with you on my part.

.....
(Signature of applicant)

[Endorsed]: Filed Mar. 21, 1945. Edmund L. Smith,
Clerk; by, Deputy Clerk.

(Defendants' Exhibit D)

[Written]: Defts Ex. 11 for Iden. RMK

NEW ENGLAND MUTUAL LIFE INSURANCE
COMPANY

Boston, Massachusetts

[Stamped]: Dec 2 1942

Attention: Hays & Bradstreet

From Department: Medical

✓

Subject: Abe Lutz—#1.174,369 for additional

Date: Dec. 14, 1942

We regret we are unable to consider further without a complete detailed statement from Dr. Rosenfeld and Dr. Lisner. If they jointly attended applicant and are fully acquainted with the facts, a statement from either may be satisfactory.

We should like full details:

Why were the doctors consulted? [Written]: Because
of ? ? ? ? ?

What were the symptoms? [Written]: none

What were the findings? [Written]: neg

What treatment or advice was given? [Written]:
none

What were the results? [Written]: Satisfactory

We are returning to you Dr. Rosenfeld's statement to the Equitable Life, as requested in your letter of December 8.

[Written]: Ex 1369. Miss Byington
H. M. FROST

m.

Medical Director.

Enclosures

M.

[Endorsed]: Filed Mar. 21, 1945. Edmund L. Smith,
Clerk; by, Deputy Clerk.

Defendants' Exhibit D)

[Written]: Defts Ex 12 for Iden RMK

NEW ENGLAND MUTUAL LIFE INSURANCE
COMPANY

501 Boylston Street, Boston

Attention: Messrs. Hays & Bradstreet

From Department: Medical [Stamped]: Jan 18 1943

Subject: Abe Lutz #1,174,369

Date: Jan. 14, 1943.

We regret to advise you that we are today removing this case from our pending file. We feel that sufficient time has now elapsed since our request for an attending physician's statement. We are, therefore, marking the application as incomplete and placing it in our closed file.

Yours very truly,

F. R. BROWN

Associate Medical Director.

IAS/AM

AM

[Endorsed]: Filed Mar. 21, 1945. Edmund L. Smith,
Clerk: by, Deputy Clerk.

(Defendants' Exhibit D)

POSTAL TELEGRAPH

* * * * *

[Written]: Defts Ex 13 for Iden RMK
S. NB 369 N.BB 348

Dec 29 PM 4 46
LA528B (FIGE) 11 SER=PNE BOSTON MASS
29 543P

NEW ENGLAND MUTUAL LIFE INS CO=
609 SOUTHIGRAND AVE LOSANGELES CALIF=
ABE LUTZ REGRET THAT THERE IS NO
CHANGE IN OUR REQUIREMENTS=

NEW ENGLAND MUTUAL LIFE INS. CO.

[Endorsed]: Filed Mar. 21, 1945. Edmund L. Smith,
Clerk; by, Deputy Clerk.

[Endorsed]: Case No. 3930. New England vs. Lutz.
Deft's Exhibit D. Date 3/28/45. No. D in Evidence.
Clerk, U. S. District Court, Sou. Dist of Calif. P. D.
Hooser, Deputy Clerk.